

EDMUND G. BROWN JR.,  
Attorney General of the State of California  
THOMAS S. LAZAR  
Supervising Deputy Attorney General  
MATTHEW M. DAVIS, State Bar No. 202766  
Deputy Attorney General  
110 West "A" Street, Suite 1100  
San Diego, CA 92101

P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 645-2093  
Facsimile: (619) 645-2061

Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H-2009-238

SHANNON MITCHELL KAZE  
12813 7<sup>TH</sup> Street, #20  
Yucaipa, CA 92399

**STATEMENT OF ISSUES**

Respondent.

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California.

2. On or about April 24, 2009, the Respiratory Care Board of California (Board) received an application for a Respiratory Care Practitioner License from SHANNON MITCHELL KAZE (Respondent). On or about March 8, 2009, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on or about October 21, 2009. On or about October 28, 2009, Respondent requested a hearing contesting the denial of his application.

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## JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part, that “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“...

“(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

“...

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

“...

1 “(m) Denial, suspension, or revocation of any license to practice by another  
2 agency, state, or territory of the United States for any act or omission that would  
3 constitute grounds for the denial, suspension, or revocation of a license in this state.

4 “...”

5 7. Section 3750.5 of the Code states:

6 “In addition to any other grounds specified in this chapter, the board may deny,  
7 suspend, or revoke the license of any applicant or licenseholder who has done any of the  
8 following:

9 “(a) Obtained, possessed, used, or administered to himself or herself in violation  
10 of law, or furnished or administered to another, any controlled substances as defined in  
11 Division 10 (commencing with Section 11000) of the Health and Safety Code, or any  
12 dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9,  
13 except as directed by a licensed physician and surgeon, dentist, podiatrist, or other  
14 authorized health care provider.

15 “(b) Used any controlled substance as defined in Division 10 (commencing with  
16 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in  
17 Article 2 (commencing with Section 4015) of Chapter 9 of this code, or alcoholic  
18 beverages, to an extent or in a manner dangerous or injurious to himself or herself, or to  
19 others, or that impaired his or her ability to conduct with safety the practice authorized by  
20 his or her license.

21 “...”

22 “(d) Been convicted of a criminal offense involving the consumption or self-  
23 administration of any of the substances described in subdivisions (a) and (b), or the  
24 possession of, or falsification of a record pertaining to, the substances described in  
25 subdivision (a), in which event the record of the conviction is conclusive evidence  
26 thereof.

27 “...”

28 ///

1           8.       Section 3732 of the Code states:

2           “(a) The board shall investigate an applicant for a license, before a license  
3 is issued, in order to determine whether or not the applicant has the qualifications  
4 required by this chapter.

5           “(b) The board may deny an application, or may order the issuance  
6 of a license with terms and conditions, for any of the causes specified in  
7 this chapter for suspension or revocation of a license, including, but not  
8 limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6,  
9 3755, 3757, 3760, and 3761.”

10          9.       Section 3752 of the Code states,

11          “A plea or verdict of guilty or a conviction following a plea of nolo  
12 contendere made to a charge of any offense which substantially relates to  
13 the qualifications, functions, or duties of a respiratory care practitioner is  
14 deemed to be a conviction within the meaning of this article. The board  
15 shall order the license suspended or revoked, or may decline to issue a  
16 license, when the time for appeal has elapsed, or the judgment of  
17 conviction has been affirmed on appeal or when an order granting  
18 probation is made suspending the imposition of sentence, irrespective of a  
19 subsequent order under Section 1203.4 of the Penal Code allowing the  
20 person to withdraw his or her plea of guilty and to enter a plea of not guilty,  
21 or setting aside the verdict of guilty, or dismissing the accusation,  
22 information, or indictment.”

23          10.       Section 3752.5 of the Code states:

24          “For purposes of Division 1.5 (commencing with Section 475), and  
25 this chapter [the Respiratory Care Practice Act], a crime involving bodily  
26 injury or attempted bodily injury shall be considered a crime substantially  
27 related to the qualifications, functions, or duties of a respiratory care  
28 practitioner.”

1                   11.     Section 3754 of the Code states: “The board may deny an  
2 application for, or issue with terms and conditions, or suspend or revoke, or impose  
3 probationary conditions upon, a license in any decision made after a hearing, as provided  
4 in Section 3753.”

5                   12.     California Code of Regulations, title 16, section 1399.370, states, in  
6 pertinent part:

7                   “For the purposes of denial, suspension, or revocation of a license, a  
8 crime or act shall be considered to be substantially related to the  
9 qualifications, functions or duties of a respiratory care practitioner, if it  
10 evidences present or potential unfitness of a licensee to perform the  
11 functions authorized by his or her license or in a manner inconsistent with  
12 the public health, safety, or welfare. Such crimes or acts include but are not  
13 limited to those involving the following:

14                   (a) Violating or attempting to violate, directly or indirectly, or  
15 assisting or abetting the violation of or conspiring to violate any provision  
16 or term of the Act.

17                   “...

18                   (c) Conviction of a crime involving driving under the influence or  
19 reckless driving while under the influence.

20                   “...”

## 21                   **COST RECOVERY**

22                   13.     Section 3753.5, subdivision (a) of the Code states:

23                   “In any order issued in resolution of a disciplinary proceeding  
24 before the board, the board or the administrative law judge may direct any  
25 practitioner or applicant found to have committed a violation or violations  
26 of law or any term and condition of board probation to pay to the board a  
27 sum not to exceed the costs of the investigation and prosecution of the case.  
28 A certified copy of the actual costs, or a good faith estimate of costs where

1 actual costs are not available, signed by the official custodian of the record  
2 or his or her designated representative shall be prima facie evidence of the  
3 actual costs of the investigation and prosecution of the case.”

4 14. Section 3753.7 of the Code states:

5 “For purposes of the Respiratory Care Practice Act, costs of  
6 prosecution shall include attorney general or other prosecuting attorney  
7 fees, expert witness fees, and other administrative, filing, and service fees.”

8 15. Section 3753.1 of the Code states:

9 “(a) An administrative disciplinary decision imposing terms of  
10 probation may include, among other things, a requirement that the  
11 licensee-probationer pay the monetary costs associated with monitoring the  
12 probation.

13 “...”

14 **FIRST CAUSE FOR DENIAL OF LICENSE**

15 (Conviction of Crimes Substantially Related to the Qualifications,  
16 Functions, or Duties of a Respiratory Care Practitioner)

16 16. Respondent’s application is subject to denial under section 3750, as  
17 defined by section 3750, subdivision (d), and 3752.5 of the Code, and Title 16 of the  
18 California Code of Regulations, section 1399.370, in that Respondent has been convicted  
19 of crimes substantially related to the qualifications, functions, or duties of a Respiratory  
20 Care Practitioner, as more particularly described in paragraphs 17 through 40, below.

21 **August 29, 1994 Conviction**

22 17. On or about August 24, 1994, Respondent was arrested for  
23 violations of Health and Safety Code section 11550 (a) [under the influence of a controlled  
24 substance]; Health and Safety Code section 11377 (a) [possession of a controlled  
25 substance]; and Health and Safety Code section 11364 [possession of a smoking device].  
26 Respondent was pulled over for expired registration tags. Respondent appeared to be  
27 under the influence of a controlled substance. Respondent admitted that he had \$40.00  
28 worth of “speed” in the trunk of the vehicle. A subsequent search of the trunk of the

1 vehicle revealed a controlled substance and several glass smoking pipes.

2 18. On or about August 26, 1994, respondent was charged in the case  
3 entitled *The People of the State of California v. Shannon Mitchell Kaze*, San Bernardino  
4 Municipal Court Case MRE02287, with the following criminal counts:

5 (a) Under the influence of a controlled substance in violation of  
6 Health and Safety Code section 11550 (a) ;

7 (b) Possession of a controlled substance in violation of Health and  
8 Safety Code section 11377 (a); and

9 (c) Possession of a smoking device in violation of Health and  
10 Safety Code section 11364.

11 19. On or about August 29, 1994, Respondent pled guilty to the  
12 following charges in Case MRE02287:

13 (a) Under the influence of a controlled substance in violation of  
14 Health and Safety Code section 11550 (a) ;

15 (b) Possession of a controlled substance in violation of Health and  
16 Safety Code section 11377 (a); and

17 (c) Possession of a smoking device in violation of Health and  
18 Safety Code section 11364.

19 20. On or about August 29, 1994, Respondent was sentenced in Case  
20 MRE02287 to serve ninety (90) days in the San Bernardino County jail.

21 **September 7, 2005 Conviction**

22 21. On or about September 22, 2004, Respondent was arrested for a  
23 violation of Penal Code section 273 (b) [cruelty to a child]. After a night of drinking at a  
24 restaurant, Respondent attacked his wife and his 13 year old step son while his wife was  
25 driving the family home from dinner.

26 22. Respondent was charged in the case entitled *People of the State of*  
27 *California v. Shannon Mitchell Kaze*, San Bernardino Superior Court Case MSB081764,  
28 with the following criminal count:

1 (a) Cruelty to a child in violation of Penal Code section 273 (b).

2 23. On or about September 7, 2005, Respondent pled guilty in Case  
3 MSB081764 to an amended second count of disturbing the peace by loud/unreasonable  
4 noise in violation of California Penal Code section 415(2).

5 24. On or about September 7, 2005, Respondent was sentenced in Case  
6 MSB081764 to twenty-four (24) months probation and to pay a fine and fees in the  
7 amount of \$1101.00.

8 **October 24, 2005 Conviction**

9 25. On or about July 30, 2005, Respondent was arrested for a violation  
10 of Penal Code section 647(f) [public drunkenness]. The San Bernardino Sheriff's  
11 Department responded to a domestic disturbance call at the Big River RV Park. Upon  
12 arrival, the Sheriffs determined that Respondent's wife locked him out of their  
13 Recreational Vehicle (RV). Respondent broke a window on the RV in an attempt to gain  
14 entrance. Respondent had a strong odor of alcohol, had bloodshot eyes and a flushed face.

15 26. On or about July 30, 2005, Respondent was charged in the case  
16 entitled *People of the State of California v. Shannon Mitchell Kaze*, San Bernardino  
17 Superior Court Case MNE012423, with the following criminal count:

18 (a) Drunk in public in violation of Penal Code section 647(f).

19 27. On or about October 24, 2005, Respondent pled guilty in Case  
20 MNE012423 of public drunkenness in violation of California Penal Code section 647(f).

21 28. On or about October 24, 2005, Respondent was sentenced in Case  
22 MNE012423 to thirty-six months (36) probation, two (2) days in San Bernardino County  
23 jail, and to pay fines and fees in the amount of \$130.00.

24 **June 23, 2008 Conviction**

25 29. On or about April 3, 2007, Respondent committed violations  
26 of Vehicle Code section 23153 (a) [driving under the influence of alcohol causing injury],  
27 and Vehicle Code section 20001 (a) [hit and run]. After a night of drinking at The Pool  
28 Club Bar, Respondent crashed into and damaged several cars on the eastbound I-10 exit



1 ramp to California St. Respondent fled the scene. Respondent was subsequently  
2 identified and arrested.

3 30. On or about June 4, 2007, Respondent was charged in the  
4 case entitled *People of the State of California v. Shannon Mitchell Kaze*, San Bernardino  
5 Superior Court Case FSB701992, with the following criminal count:

6 (a) Driving under the influence of alcohol causing injury in  
7 violation of Vehicle Code section 23153 (a); and

8 (b) Hit and run in violation of Vehicle Code section 20001 (a).

9 31. On or about June 23, 2008, Respondent pled nolo contendere in Case  
10 FSB701992 of driving under the influence of alcohol causing injury in violation of Vehicle  
11 Code section 23153 (a).

12 32. On or about June 23, 2008, Respondent was sentenced in Case  
13 FSB701992 to thirty-six (36) months probation, pay a fine and fees totaling \$1,630.00, and  
14 serve ninety (90) days in San Bernardino County jail.

15 **June 23, 2008 Conviction**

16 33. On or about August 17, 2007, Respondent was arrested for  
17 violations of Vehicle Code section 23152 (a) [driving under the influence of alcohol], and  
18 Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08% or higher].  
19 Respondent was observed tail-gaiting and speeding through an intersection. Respondent  
20 was stopped by the San Bernardino Sheriff's Department and exhibited the classic  
21 symptoms of one under the influence of alcohol.

22 34. On or about August 17, 2007, Respondent was charged in the  
23 case entitled *People of the State of California v. Shannon Mitchell Kaze*, San Bernardino  
24 Superior Court Case TSB702367, with violations of Vehicle Code section 23152 (a)  
25 [driving under the influence of alcohol], and Vehicle Code section 23152 (b) [driving with  
26 a blood alcohol level of .08% or higher].

27 35. On or about June 23, 2008, Respondent pled guilty in Case  
28 TSB702367 to driving with a blood alcohol level of .08% or higher in violation of Vehicle

1 Code section 23152 (b).

2 36. On or about June 23, 2008, Respondent was sentenced in Case  
3 TSB702367 to thirty-six (36) months probation and to serve thirty (30) days in San  
4 Bernardino County jail concurrent with case FSB701992.

5 **September 29, 2008 Conviction**

6 37. On or about September 26, 2008, Respondent was arrested for  
7 violating Penal Code section 273.5 (a) [inflicting corporal punishment on a spouse]. After  
8 a day of drinking, Respondent physically attacked his girlfriend in a room at the Agua  
9 Caliente Casino in Rancho Mirage California. Respondent punched the victim in the face  
10 multiple times, broke her cell phone by throwing it against a wall, and threw her shoes and  
11 clothing off the balcony.

12 38. On or about September 29, 2008, Respondent was charged in the  
13 case entitled *People of the State of California v. Shannon Mitchell Kaze*, Riverside  
14 Superior Court Case INM191998, with a violation of Penal Code section 273.5 (a)  
15 [inflicting corporal punishment on a spouse].

16 39. On or about September 29, 2008, Respondent pled guilty in Case  
17 INM191998 to inflicting corporal punishment on a spouse in violation of Penal Code  
18 section 273.5 (a).

19 40. On or about September 29, 2008, Respondent was sentenced in  
20 Case INM191998 to thirty-six (36) months probation, serve four (4) days in Riverside  
21 County jail, perform twenty (20) hours community service, enroll in and complete a fifty-  
22 two (52) week domestic violence program, and pay \$400.00 in fines and fees.

23 **SECOND CAUSE FOR DENIAL OF LICENSE**

24 (Conviction of Crimes Involving Driving Under the Influence)

25 41. Respondent's application is further subject to denial under section  
26 3750, as defined by section 3750, subdivision (d), and 3752 of the Code, and Title 16 of  
27 the California Code of Regulations section 1399.370, subdivision (c), in that he was  
28 convicted of a crime involving driving under the influence of alcohol, as more particularly

described in paragraphs 29 through 36, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

**THIRD CAUSE FOR DENIAL OF LICENSE**

(Disciplinary Action Taken by Another State Agency)

42. Respondent's application is further subject to denial under section 3750, as defined by section 3750, subdivision (m), in that he has had disciplinary action taken by another State agency, as more particularly described in paragraphs 43 through 44, below.

**California Department of Insurance Administrative Action**

43. On or about May 14, 2007, the California Department of Insurance filed Accusation No. LBB 3897-AP against Respondent's life agent license issued by the California Insurance Commissioner. The circumstances are as follows:

(a) On October 12, 2006, Respondent filed a renewal application for his life agent license. Question #2 of the renewal application reads as follows:

"Have you ever been convicted of a crime, since your last previous application or renewal?" 'Crime' includes a misdemeanor, felony or a military offense. 'Convicted' includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of nolo contendere, no contest, having had any charge expunged, dismissed or plea withdrawn pursuant to Penal Code Section 1203.4, or having been given probation, a suspended sentence or a fine. You may exclude traffic citations and juvenile offenses tried in juvenile court. You should answer 'yes' if you have been convicted of a felony or a misdemeanor including driving offenses such as, but not limited to, reckless driving, driving under the influence and driving with a suspended license, whether or not you spent any time in jail, and whether or not you believe the conviction has been removed from your record. "

1 (b) Despite his convictions on September 7, 2005 and October  
2 24, 2005, as set forth in paragraphs 21 through 28, above, which are hereby  
3 incorporated by reference and realleged as if fully set forth herein, Respondent  
4 answered "No" to Question #2 of the renewal application.

5 44. On or about March 9, 2008, the California Department of Insurance  
6 revoked Respondent's life agent license for violations of California Insurance Code  
7 sections 1668 (h) [lack of integrity] and 1738 [knowingly or willfully making a  
8 misstatement in an application].

9 **FOURTH CAUSE FOR DENIAL OF LICENSE**

10 (Commission of a Fraudulent, Dishonest or Corrupt Act)

11 45. Respondent's application is further subject to denial under section  
12 3750, as defined by section 3750, subdivision (j), in that he has committed a fraudulent,  
13 dishonest or corrupt act or acts substantially related to the qualifications, functions, or  
14 duties of a respiratory care practitioner, as more particularly described in paragraphs 29  
15 through 32 and 43 through 44, above, which are hereby incorporated by reference and  
16 realleged as if fully set forth herein.

17 **FIFTH CAUSE FOR DENIAL OF LICENSE**

18 (Use of a Controlled Substance)

19 46. Respondent's application is further subject to denial under section  
20 3750, as defined by section 3750.5, subdivision (b), in that he illegally used a controlled  
21 substance, as more particularly described in paragraphs 17 through 20, above, which are  
22 hereby incorporated by reference and realleged as if fully set forth herein.

23 **SIXTH CAUSE FOR DENIAL OF LICENSE**

24 (Possession and Use of a Controlled Substance )

25 47. Respondent's application is further subject to denial under section  
26 3750, as defined by section 3750.5, subdivision (a), in that he illegally possessed and used  
27 a controlled substance, as more particularly described in paragraphs 17 through 20, above,  
28 which are hereby incorporated by reference and realleged as if fully set forth herein.

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3. Taking such other and further action as deemed necessary and proper.

DATED: January 7, 2010

Original signed by Liane Freels for:  
\_\_\_\_\_  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
State of California  
Complainant

SD2009805148  
kaze\_s\_soi.wpd